THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.23992 of 2007

ORDER :

This Court issued Notice Before Admission on 15-11-2007.

2. Heard Sri Bajrang Singh Thakur, learned counsel for the petitioner.

3. The Writ Petition is filed praying for a Writ of Mandamus declaring the action of the respondent No.2 officials in not receiving the application of the petitioner dated 30-10-2007 for correcting of date of birth as 17-11-1982 with that of wrong mentioned date of birth dated 17-11-1978 in existing passport bearing No:B 1876082 valid from 18-04-2000 to 17-04-2010 and refusing to issue fresh passport correcting the wrong date of birth by asking the petitioner to bring decree from competent Civil Court of law as arbitrary, illegal, against the principles of existing law, circulars and pass such other orders.

4. It is stated that the petitioner was born on 17-11-1982 and the same is evident in his SSC marks memo issued by the Board of Secondary Education, A.P., after completion of his SSC. At present he is studying degree. That in the year 2000, when he was residing with his parents at H.No.17-1-30/70, Ram Chandar Nagar, Eadi Bazar, Hyderabad, he was intending to take passport from the respondent Nos.2's office. As the petitioner had not been knowing the procedure to obtain passport, he approached an agent, who had asked him to write his name in Urdu on some papers, at that time he collected some amount from the petitioner and had taken his particulars of date of birth and he has taken passport

bearing No:B1876082 valid from 18-04-2000 to 17-04-2010 and handed it over to the petitioner. There had been no occasion for the petitioner to verify his date of birth in the passport all these years. As now he is studying B.Com. final year, in future he wants to continue his studies in abroad and to go abroad, in the last week when he approached an agent, who asked him to give copies of his existing passport and his SSC marks memo to show his date of birth. Then the agent tallied the date of birth as mentioned in petitioner's existing passport bearing No:B 1876082 with that of petitioner's date of birth in SSC marks memo and informed the petitioner that there is difference in the mentioning of date of birth and the date of birth in the existing passport is not in accordance with SSC marks memo. Further he informed the petitioner that unless petitioner gets that rectified from the respondent No.2, there is no possibility of his going abroad. That immediately petitioner got prepared application on 30-10-2007 in the name of the respondent No.2 mentioning about the wrong mention of date of birth by the agent without any proof as 17-11-1978, even though his correct date of birth is 17-11-1982 as shown in his SSC marks memo and informed that it was not his mistake and there was mistake committed by his agent about mentioning of his date of birth wrongly in obtaining his existing passport bearing No:B1876082, valid from 18-04-2000 to 17-04-2010 from the respondent No.2 and requested him to issue fresh passport by correcting petitioner's date of birth as per his SSC marks memo issued by the Board of Education Department. Further, as he changed his residence from old address to the present address, as shown in the application, the officials of the respondent

No.2 refused to receive his application for correction of date of birth and for issuance of the fresh passport by saying unless he obtain decree from competent civil Court of law, they would not receive his application and give fresh passport by correcting his wrong mentioned date of birth as in his existing passport.

5. It is further stated that even though the respondent No.2 is not empowered to change date of birth in regard to the passport holders who born before 26th January, 1989, if a person, who holds a passport with incorrect date of birth, files application along with the date of birth certificate issued by the Educational Board or any Certificate issued by the educational boards evidencing the date of birth, the respondent No.2 is empowered for issuance of fresh passport by taking back the existing passport as shown in "The Passport Information Booklet", as shown in the passport Rules, 1980 at column No:4 "Birth Documents" at para No.2, sub Para (iv). It is further stated that apart from that in similar circumstances the respondent No.1 submitted a circular Dt:18th April, 2001 before the Hon'ble High Court of judicature of Bombay in Civil Writ Petition No.1072 of 2002, in which there are clear instructions to the respondent No.2 not to insist for any civil court decree for change of date of birth in existing passport and this Court also referred and disposed of writ petitions. In such circumstances, the petitioner approached this Court by filing the present writ petition praying for appropriate relief.

6. The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs

(PV-I Section)

Circular

___/401/2/5/2001 *18th April, 2001*

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

The learned Counsel placed strong reliance on the decision in ***ALI IMRAN v. REGIONAL PASSPORT OFFICER, SECUNDERABAD***[1] wherein the learned Judge of this Court at paras 3 and 4 observed as hereunder:-

> *"Be it noted that under provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinafter, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the Civil Court.*
>
> *Having regard to the clarification issued by the Government of India, I directed the learned Standing Counsel for Central Government, Sri K.G.Krishna Murthy to produce a copy of the application made by the petitioner for passport in the year 1999. The application is produced before me today. A perusal of the application along with its enclosures reveal that the petitioner enclosed Secondary School Certificate bearing C019604 dated 10-6-1987 which shows his date of birth as 28-7-1992. Therefore, it cannot be said that an error has crept in the passport issued to the petitioner. As the petitioner is now placing reliance on the on the birth certificate issued by the Registrar of Births and Deaths, Municipal Corporation of Hyderabad, which shows his date of birth as 28-7-1975, his case does not fall within the guidelines/instructions*

issued by the Government of India. If the petitioner is so advised, he may have to approach the Civil Court or the authorities under the Education Act seeking necessary correction of date of birth in the Secondary School Certificate and then approach the passport issuing authority. The petitioner's application was rightly not accepted by the respondent."

In ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad***[2] the learned Judge observed at paras 4, 5, 6 and 7 as hereunder:-

*"In **Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,** I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational

authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali Imran (referred above)*** *this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no*

order as to costs."

7. The specific stand taken by the petitioner is that in the Secondary School Certificate issued by the Board of Secondary Education, the petitioner's date of birth was correctly mentioned. In the light of the facts and circumstances and also the specific stand taken by the petitioner, the second respondent is hereby directed to consider the case of the petitioner in relation to his change of date of birth in accordance with the Secondary School Certificate in the light of the Circular and also the views expressed by this Court in the decisions referred to supra, within a period of four weeks from the date of receipt of this order.

8. The Writ Petition is accordingly disposed of. No order as to costs.

_____

Justice P.S.Narayana

29th November, 2007

skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.23992 of 2007

Dated: 29th November, 2007

BETWEEN:

Syed Abdul Imra,
S/o Syed Abdul Sattar,
Aged about 29 years,
Occ:Student, Presently residing
at H.No.18-1-350/A/43, Fatima Nagar,
Chandrayangutta, Hyderabad

.. Petitioner

And

The Joint Secretary (CVP) &
The Chief Passport Officer
CVP Division, Ministry of External Affairs,
Patiala House Annexee,
Tilak Marg, New Delhi-110011 and another
.. Respondents

---

[1] 2003 (3) ALD 625
[2] 2005(1) ALT 95